IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO. 1037 OF 2002 (O&M)

DATE OF DECISION: NOVEMBER 29,2006

Punjab Agro Industries Corporation, Chandigarh

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CRIMINAL REVISION NO. 1547 OF 2002

PUNSUP, Chandigarh.

.....Petitioner

VERSUS

Rajesh Garg

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. Arun Nehra, Advocate,
for the petitioner.
(In Crl.Revision No.1037 of 2002)

Ms. Deepali Puri, Advocate,
for the petitioner.
(In Crl.Revision No.1547 of 2002)

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

Mr. Baldev Singh, Sr.Advocate with
Mr. Sudhir Sharma, Advocate,
for respondent No.2.
(In Crl.Revision No.1037 of 2002)

Mr. R. S. Rai, Advocate,
for the respondent.
(In Crl.Revision No.1547 of 2002).

*****

RANJIT SINGH, J.

The abovesaid two Criminal Revisions are being disposed of together by this judgment as common questions of law arise in these petitions.

These two petitions relates to the proceedings arising out of paddy given to the rice mill for the purpose of shelling, leading to registration of FIRs against the respective rice mills. These revisions have been filed by Punjab Agro Industries Corporation, Chandigarh (hereinafter referred to as "the Corporation") and Punjab State Civil Supplies Corporation (hereinafter referred to as "PUNSUP") respectively against the order passed by the Additional Sessions Judge, Sangrur, dated 14.1.2002, whereby he has accepted the revision filed by the respondent-rice Mills against the order framing charge against the said mill by the trial Court. The reasons in both the impugned orders are almost identical.

Reply alongwith documents Annexures R-1 to R-20 filed in Court on behalf of respondent No.2 (in Crl.Revision No.1037 of 2002) are taken on record.

The facts, as noticed from the impugned order passed in Criminal Revision No.1037 of 2002, in brief, are that M/s Ganpati Rice Mill, Sangrur, was allotted paddy and was required to deliver rice to FCI in the account of the Corporation. An agreement between the proprietor of the mill and the Corporation was also entered into. As per the agreement, the Corporation, had stored 44531 bags weighing 28945.15 Qtls. Of A grade paddy in the premises of the mill. On 6.6.2000, Shri Rajinder Pal, Mandi Incharge, reported that

there was no stock of paddy available in the mill whereas the same was available when he had visited and checked the same on 1.6.2000. It was accordingly alleged that M/s Ganpati Rice Mills, Sangrur, embezzled 32662 bags weighing 21230.541 Qtls. Of paddy. Accordingly, FIR was lodged and challan was presented under Section 406 IPC. The respondent-mill had moved an application for discharge on the ground that dispute was of a civil nature and there was an arbitration clause in the agreement and as such, it was pleaded that initiation of the criminal proceedings was an abuse of the process of the Court. Learned Chief Judicial Magistrate, Sangrur, however, vide his order dated 3.10.2001, directed framing of charge against accused-respondent Mill etc. under Section 406 IPC. It is against this order that revision was filed before the Additional Sessions Judge, Sangrur, who vide impugned order dated January 14, 2002, while allowing the revision, has set-aside the order of the trial Court and discharged the accused.

Similarly (in Crl.Revision No.1547 of 2002) M/s Ganpati Rice Mills, Sangrur, was allotted 54560 bags of paddy by PUNSUP during Kharif year 1999-2000 for custom milling. Agreement containing arbitration clause was also entered into between M/s Ganpati Rice Mills and PUNSUP. In terms of this agreement, Ganpati Rice Mill was to deliver 23523-27 Qtls. of rice to the FCI in the accounts of PUNSUP. The mill, however, delivered only 5969 Qtls. of rice and, thus, a balance of 26455.01 Qtls. of paddy still remained with the mill. On 30.5.2000, the District Manager checked the premises of the firm and found that whole paddy was missing. No stock was found available with the mill. It was, thus, found that the

entire remaining stock has been embezzled by the mill and its partners, leading to registration of an FIR under Sections 406 and 420 IPC.

As in the above mentioned case, the mill filed an application for discharge on identical grounds as already mentioned. The trial Court, after considering the documents and the averments, framed a charge against the mill in this case as well under Section 406 IPC, which was impugned in the revision before the Additional Sessions Judge, Sangrur. Like in the earlier case, the revisional Court, on identical grounds, accepted and allowed this revision also and ordered the discharge of the respondents. This order has been impugned in Criminal Revision No.1547 of 2002.

It is noticed that both the orders have been passed by the same Court by giving identical reasons. A perusal of the record would show that the Chief Judicial Magistrate, Sangrur, in both the cases had relied upon a judgment of the Hon'ble Supreme Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, JT 1999 (6) S.C. 618, while framing the charges. While accepting the revision, the Additional Sessions Judge has noticed this judgment, as is seen from Paragraph 13 of his order, in both the cases. The fact that criminal proceedings can not be quashed on the ground that there was an arbitration clause was noticed. It was also noticed that as per the judgment of the Hon'ble Supreme Court that even where there is a stipulation for referring the dispute to the Arbitrator, criminal proceedings could not be quashed, the revisional Court went on to quash the charge and accepted the revisions. It is not understood as to how the Court has ignored the judgment of the

Hon'ble Supreme Court. In view of the law laid down by the Hon'ble Supreme Court, the reference to any judgment of the High Court would be meaningless. Even otherwise, it is required to be seen, if the charge, which had been framed in this case, could have been ordered to be quashed in view of various judgments passed by the Hon'ble Supreme Court. Though in certain cases, the Hon'ble Supreme court has taken a view that where there is an arbitration clause and if the same is invoked, then criminal prosecution may be interfered with but each case is required to be seen having regard to its facts. Though the revisional Court has referred to some other judgments but basically in all such cases reliance has generally been placed on Kailash Verma Vs. Punjab State Civil Supplies Corporation and another, 2005 (1) RCR (Criminal) 727. In this case, it was held by the Hon'ble Supreme Court that non-return of the rice, as per the agreement, would only reveal a dispute of civil nature and as such, no offence under Section 406 IPC was made out. This aspect of the law laid down in Kailash Verma's case (supra) has been considered by this Court. It is required to be seen if the ratio of the decision in Kailash Verma's case (supra) would be attracted in the facts and circumstances of this case or not. For that, it would be essential to understand that the system of entrusting paddy for custom milling. There are two types of rice which are milled by the millers and there are known as levy rice and custom milled rice. A difference between the two types is required to be understood. Custom milling rice is the rice delivered by the millers to the Govt. of the paddy purchased by Govt. or its agencies and given to the millers for milling. Levy rice is a rice delivered by the millers to the Govt. out

of the paddy purchased by them directly from the market and they are required to give 75 % of the rice out of the paddy milled and purchased by them. It is thus clear that the paddy, which is supplied to the mill for custom milling of rice is a property of the agency, which had supplied paddy and it is only entrusted to the mill for the purpose of milling. The mill is required to account for the rice and in case it is unable to do so, certainly it would expose itself to criminal liability, besides the civil liability that it may incur. In the State of Punjab, a scam known as “Rice Scam” received very wide publicity. The millers had apparently benefited to a huge extent by short supplying rice in return for the paddy that was entrusted to the Mills. This, of course, could not have been without the connivance of employees of agency. The rice scam was of multi facet in nature. It was found that in some cases, the price of the rice was more in the market than the rate at which this was required to be supplied to the government. The same was sold by the mills in the market. In these circumstances, it was very easy for the millers to urge that they were prepared to compensate the agency. In civil liability, they would still be gainers by paying dues of the agency. In some other cases, where it was found that the price of the rice was more if it was returned to the agency than the open market, then the millers resorted to mixing the custom milled rice with the levy rice and thus gained tremendously. All these issues are required to be adjudicated properly in a proceeding, which may be of a civil or criminal nature. It is not clear if the rice given for shelling in Kailash Verma's case (supra) was custom mill rice. Such arrangement would always reveal entrustment as mentioned above.

It can be noticed that the trial Court had rightly referred to

and relied upon Trisuns Chemical Industries' case (supra) to direct framing of charge against the respondents. In this case, the allegation of the complainant was that the Director-respondent had approached the appellant -Company for supply 5450 metric tones of "Toasted Soyabean Extractions" for a price of nearly four and a half crores of rupees. The appellant Company paid the amount through cheques. The commodity, which was supplied, was found to be most inferior and sub-standard quality. The complainant had suffered a loss of Rs.17 lacs from this consignment. After obtaining report in regard to the inferior quality of the consignment, the complaint was filed for initiating the criminal prosecution against the accused. The High Court had quashed this complaint on the ground that the dispute is purely of a civil nature and hence no prosecution should have been permitted. The same was taken in appeal before the Hon'ble Supreme Court. Noticing the judgment in the cases of State of Haryana v. Bhajan Lal, JT 1990 (4) SC 650 and Rajesh Bajaj v. State NCT of Delhi JT 1999 (2) SC 112, the Hon'ble Supreme Court observed that "time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions." In the case of Rajesh Bajaj (supra), the Hon'ble Supreme Court had observed that "merely because an act has a civil profile is not sufficient to denude it of its criminal outfit." It would be a benefit to quote observations of Hon'ble Supreme Court in this regard:-

> "It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that

> the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."

In Trisuns Chemical Industry'case (supra), the Hon'ble Supreme Court specifically dealt with the filing of a criminal complaint in cases where there is an arbitration clause. In this regard, the Hon'ble Supreme Court observed as under:-

> "We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in **Bhajan Lal v. State of Haryana (**Supra)."

It can be, thus, said that criminal prosecution and remedy by way of arbitration are two separate and distinct courses available to an aggrieved party. As noticed by the Hon'ble Supreme Court,

arbitration is a remedy affording relief for breach of agreement and this cannot be a substitute for a criminal trial where the facts reveal commission of an offence, which may be arising out of the same sets of facts. As already noticed above, the arbitration clause in itself cannot lead to quashing all the proceedings and it would depend on facts and circumstances of the case. It has to be resorted to in an exceptional case as may have been done in the case of Kailash Verma (supra). The present case, in my considered opinion, would not fall under such extreme or exceptional case.

In the cases before us M/s Ganpati Rice Mill was entrusted a huge quantity of paddy and it being custom milling arrangement, the mill was required to return rice after shelling paddy. In short, this was the property of the petitioner concern in respective cases and was entrusted to the mill only for the purposes of shelling. How can conduct of the mill be held justified when on checking huge quantity of paddy entrusted by respective Corporations was found to be missing. This is a clear case of embezzlement or breach of trust. As noticed in the earlier portion of the judgment, the arbitration would go into the compensation, which is required to be paid to the respective Corporations due to embezzlement of the paddy entrusted by the Corporation to the Mill. This apparently would have been done because the rate of the rice in the market was bound to be much more than at which it was supposed to be given to the Corporations. It is very easy for the mill now to say that it is prepared to compensate the Corporations but it would still be a gainer. This aspect will be looked into as a civil liability in the arbitration proceedings. The conduct of the respondent mill in respective

petitions cannot get absolved of criminal liability at the thresh hold for embezzling or mis-appropriating the paddy, which was entrusted to it for shelling and return of the rice to the respective Corporations. These facts in the petitions would make out a prima-facie case for commission of offences under Penal law in addition to the civil liability that may be standing against the respondent mill.

Accordingly, both the petitions are allowed. The orders passed by the Additional Sessions Judge, Sangrur, dated 14.1.2002, discharging the respondent-mill and the other accused are set-aside and the order passed by the trial Court dated 3.10.2001, in framing the charge is restored. The trial Court is directed to proceed against M/s Ganpati Rice Mill from the stage where the charge was quashed.

November 29, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**